



TOWN OF BEAUX ARTS VILLAGE
BOARD OF ADJUSTMENT
MINUTES

June 14, 2007
Hauck

PRESENT: Acting Board Chairman Steven Hauck, Board members Peggie Bates, Robin Stefan, Steve Matsudaira and Gail D'Alessio.

GUESTS: Town Planner Mona Green; Town Attorney Wayne Stewart, Applicant Brent Zefkeles; Helen Lewis.

DEPUTY TOWN CLERK: Angela Kulp

PUBLIC HEARING: ZEFKELES' REQUEST FOR BOA REVIEW #07-1, (Lot 1, Block 13): Chairperson Hauck called the meeting to order, opened the public hearing at 7:32pm, and asked attendees to introduce themselves. Town Attorney Stewart reminded Boardmembers how a public hearing works and the difference between an open and closed hearing.

Deputy Clerk noted for the record that notices were posted, published, and mailed to property owners within 300 feet of the property as required by Town ordinance and that this matter is properly before the Board of Adjustment.

Chairman Hauck asked the Boardmembers present if they had participated in any *ex parte* communication regarding this application. Three Boardmembers commented that they had received and read an email from Boardmember Stefan in which she listed the questions she had for Attorney Stewart before the hearing. It was determined this email does count as *ex parte* communication but does not disqualify anyone from participating or voting. No other *ex parte* conversations were revealed, and there was no challenges from the applicant or public as to appearance of fairness of any Boardmember to hear the BOA Review.

Chairman Hauck asked Town Planner Mona Green to give her staff report.

Ms. Green began by stating that Brent and Joan Zefkeles are requesting an exception to Ordinance 350 in order to remove a "Protected Tree" from their property. Ms. Green explained that the Town Council passed Ordinance 350 on February 13, 2007, which prohibits the topping or removal of any tree with a diameter in excess of eight inches measured at any point on the trunk and located on private property ("Protected Tree") in the Town of Beaux Arts Village. She added that exceptions to the moratorium are permitted in cases of danger to persons or

property or if an applicant for a building permit can demonstrate to the Board of Adjustment that the request meets the three criteria found in Section 2.3 of the Ordinance.

Ms. Green offered the following background information: The tree subject to this request is a mature evergreen located in the approximate center of the property. The existing home was constructed in 1948, and the applicants wish to demolish the structure and build a new home. Prior to developing a design for the new home, the applicants seek permission to remove this tree.

Ms. Green then read from her written staff report as follows:

Ordinance 250, Section 2. Exceptions: A protected tree may be removed only under one of the following exceptions:

2.1 The removal is necessary to remedy an immediate and imminent danger to persons or property; or

(Not applicable.)

2.2 The tree poses a danger to persons or property as shown by a report written by a certified arborist and filed with the Town Clerk, and the removal is approved in writing by the Building Official or his/her representative; or

(Not applicable)

2.3 An applicant for a building permit demonstrates to the Board of Adjustment that:

2.3.1 Waiting for this moratorium to expire creates hardship for the applicant;

Applicants state that an economic hardship exists in that they are prohibited from finalizing house plans until the moratorium either expires or they are granted an exception, costing them thousands of dollars per month in additional mortgage payments.

Staff comment: The applicants purchased this property on October 13, 2006, one month prior to the Town's November 14, 2006 imposition of the three month tree moratorium.

2.3.2 An exception is necessary because of circumstances relating to the size, shape, topography, location, surroundings, and features of the applicant's property; and

Applicants state that the location of the tree in the center of the lot limits the placement, style, size and livability of a new home.

Staff comment: Staff concurs with applicants' assessment. In addition, if the applicants were to proceed with a design which accommodated retention of the tree, it is unknown whether the tree could survive the construction impacts. It is impractical to design around the tree.

2.3.3 The exception is reasonably necessary to relieve the demonstrated hardship.

Applicants state that removal of the tree at this time would allow them to proceed with appropriate project financing and commence construction in a timely manner.

Staff comment: Staff concurs with applicants' assessment.

Planner Green concluded by stating that the applicants satisfy the three exception criteria and recommended that Brent and Joan Zefkeles' be granted permission to remove the subject tree.

Planner Green added that the Board of Adjustment may wish to condition the permission by requiring the property owner to mitigate for the removal of the tree by planting suitable evergreen vegetation based upon the diameter of the subject tree. She offered, as an example, if the subject tree has a diameter of 36" measured at 4' from the ground, the property owner would be required to plant evergreen vegetation that totals 36" at 4'. She noted that this allows some flexibility in plant size and selection; the applicant could plant nine 4" trees or six 6" trees, etc. She also added that the applicants have stated that they are working with the Washington State Department of Fish & Wildlife to develop a bald eagle mitigation plan and indicated that the Town's mitigation plan should be coordinated with the state plan.

Chairman Hauck then asked the applicants to present their request. Brent Zefkeles stated that he and his wife, Joan, purchased the property at 10604 SE 27th Place on October 16, 2006 to build a residence for their family of five and yellow lab. He said they are second generation Eastsiders and avid kayakers. He shared their love of nature and previous home experiences of working hard to rejuvenate and maintain beautiful, native landscapes with tall evergreens. He said they were attracted to the village as privacy and natural landscape beauty are important to them. He indicated their wish is to create a residence that's harmonious with the natural setting, and unfortunately face a development issue with the location of a single, large conifer tree in the middle of their property. He explained that since the tree is within the footprint of their intended house- and likely any new house- they request an exception to the moratorium to remove it.

In response to the three BOA Review criteria for exceptions to Ordinance No. 350, Section 2.3, Mr. Zefkeles offered the following:

2.3.1 Waiting for this moratorium to expire creates hardship for the applicant;

We're carrying purchase loans on two properties, with this lot costing us thousands of dollars monthly, until designs are finalized, permits approved, and the construction loan takes over. We can't reasonably finalize house designs until the tree removal is approved or denied, which drastically impacts design options, and has kept our project on hold.

2.3.2 An exception is necessary because of circumstances relating to the size, shape, topography, location, surroundings, and features of the applicant's property; and

With a small, square lot (approx. 1/4 acre), and setback requirements, a large tree in the center severely limits the placement, style, size and livability of any new home. The tree is in the worst location possible on a small residential lot for constructing a new residence. In addition, we now have to incorporate more structural elements onto the lot, namely the garage, whereas the previous owner had benefited from a garage on town property.

The existing house is at the end of its lifecycle and in need of replacement. So this issue would be paramount to anyone intending to build on this lot. Designing around the tree introduces style elements of an inner-city skinny house, and encroaches on the privacy spacing and property enjoyment of neighbors or the public access. This serves to upset the balance of the natural, private setting taken as a whole.

We want to minimize lot and neighborhood impact, remove only a single tree, maintain the many remaining trees, and plant additional conifers and other trees and shrubs in the completed landscape. We also welcome the opportunity to participate in planting native trees and shrubs to beautify the adjacent centennial park area.

2.3.3 The exception is reasonably necessary to relieve the demonstrated hardship.

Granting the exception will allow us to avoid significant spending on ongoing duplicate monthly loan payments, reducing by several months the time to transact our construction loan and commence construction.

Mr. Zefkeles' also shared that they are working with the Department of Fish and Wildlife to obtain a site-specific bald eagle plan allowing for removal of the tree, by

maintaining existing trees and planting additional conifers in the perimeter. They said they've received favorably response to their informal proposal, and continue to work on obtaining a formal plan approval. He stated they intend to remove the tree *only if and when* they have separate approvals from both the Board of Adjustment and the Department of Fish and Wildlife.

In summary, Mr. Zefkeles' reminded the Board that they are willing to work with the village to maximize our common goals for the native beauty and privacy of the area. He said they look forward to responsibly constructing their residence with ecological sympathy and nurturing and reminded everyone that they come as friend, not foe, to contribute to the beauty and serenity of the area, including an understanding of the home's relationship to both landscape and neighborhood.

Chairperson Hauck asked if there were any questions for Town Planner Green or the applicant, Mr. Zefkeles. Applicant Zefkeles offered to share other options of drawings and plans, as in a variance request, in an attempt to show their flexibility. Chairperson Hauck reminded him that this review was to discuss the tree in question only and was not a variance hearing; therefore, no other options would be discussed or shown.

Attorney Stewart inquired to the lot size and the age and health of the tree Mr. Zefkeles answered that the lot is 12,539 sq. ft and the health of the tree is unknown but assumed to be healthy and mature.

Planner Green asked if a structure could be put on the lot utilizing current setbacks and codes without removing the tree. Mr. Zefkeles indicated that a structure could only be built with a variance if the tree were not removed. He noted the village seems to have a preference for older trees over younger ones but explained that there are many other conifers in the setback that would be also impacted by a variance request. He added that perhaps a variance wouldn't be allowed anyway.

Boardmembers Stefan and Matsudaira expressed their concern about the condition of the tree and the lack of an arborist's report. They also expressed concern about the definition of hardship, procedures for appeals and continuances, and the need for additional information. Chairperson Hauck reminded the Board members the only issue to determine at this hearing is the fate of the tree.

Town Attorney Stewart and Planner Green both explained why an arborist's report would not assist in this situation. Mr. Zefkeles insisted he did not want a continuance and needed a decision at this meeting, one way or another. Town Attorney Stewart indicated that an appeal for Mr. Zefkeles would not be possible.

Discussion continued about tree mitigation and the possibility of putting that mitigation in writing as a condition of approving the Zefkeles building permit.

Chairperson Hauck reminded Boardmembers that they cannot require tree mitigation as a condition, but if Mr. Zefkeles offers it, then the mitigation can be a condition of the Building Permit. Mr. Zefkeles confirmed that he is offering tree mitigation. Boardmembers asked that Planner Green's suggestion for tree mitigation (as stated above) be used as a condition of approving this request.

Chairman Hauck then asked for comments from the public. Deputy Clerk Kulp read an email from resident Karen Scott (2855-103RD Ave SE) urging careful consideration and showing a preference for a variance over a tree removal unless as a last resort it was necessary.

Helen Lewis, 10507 SE 28th St., offered that she concurs with Karen Scott's opinion.

Chairman Hauck asked if there were any other comments from the public. As there were none, he closed the public hearing at 8:45pm.

Boardmember D'Alessio shared that although she appreciates the age and beauty of the tree, building around the tree impacts neighbors which she finds unacceptable. She added that the tree would still only be enjoyed by the applicant, as it is not readily visible from the street. She also commented that knowing the tree moratorium (Ordinance 350) was not in effect at the time of purchase also weighs highly in her decision to support the applicant's right to take the tree down.

Boardmember Stefan shared her extreme frustration in wanting to save the tree and see other plans. She stated that although she loves the tree, she feels that, based on the criteria, she has to support the cutting of the tree but hopes the applicant will instead consider a variance to save the tree. She added that if the tree is to be cut, a written plan for mitigation is critical.

Boardmember Matsudaira agreed with Boardmember Stefan and shared his empathy. He said he is struggling with the decision especially since there are no guarantees the tree would survive.

Boardmember Hauck stated he appreciated the applicant's ability to consider keeping his options open and would have liked to see an arborist's report.

Boardmember Bates said she felt the Council should review this hearing as an example of the difficulty the Board had in interpreting the rules in this case.

MOTION: Board member D'Alessio moved to conduct a VOTE on all three criteria needed with the tree mitigation condition that the circumference of the new trees match the circumference of the tree in question, measured at a height of 48" up from the ground. Board member Matsudaira seconded.

Vote: 5 For, 0 Against, 0 Abstain. Motion carried unanimously.

The results of the Board's vote on each of the three criteria is as follows:

Criterion 1: Section 2.3.1 Waiting for this moratorium to expire creates hardship for the applicant;

The Board is unanimous that Criterion 1 is satisfied.

Criterion 2: Section 2.3.2 An exception is necessary because of circumstances relating to the size, shape, topography, location, surroundings, and features of the applicant's property;

The Board is unanimous that Criterion 2 is satisfied. AND

Criterion 3. Section 2.3.3 The exception is reasonably necessary to relieve the demonstrated hardship.

The Board is unanimous that Criterion 3 is satisfied.

BOA Review No. 07-1 does satisfy all three of the exception criteria and is hereby approved with the request that the planting of trees to equal the circumference of the tree removed (measured at a height of 48" up from the ground) be a condition of a Building Permit when granted.

Chairperson Hauck adjourned the meeting at 9:00pm.

Respectfully submitted,

Angela Kulp
Deputy Clerk

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Final 6/18/07